

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO - EASTERN DIVISION

LAURA HOFFMAN, et al.,

Plaintiff,

-vs-

JUDGE BOYKO

CASE NO. 1:18-CV-00309

MICHAEL O'MALLEY, et al.,

Defendants.

- - - -

Videotaped deposition of RYAN MIDAY, taken as
if upon examination before Chana Margareten, a
Notary Public within and for the State of Ohio,
at the Cuyahoga County Prosecutor's Office, 1200
Ontario Street, Eighth Floor, Cleveland, Ohio, at
11:28 a.m. on Friday, June 14, 2019, pursuant to
notice and/or stipulations of counsel, on behalf
of the Plaintiffs in this cause.

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8 On behalf of the Plaintiffs;

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15 On behalf of the Defendants.

16 ALSO PRESENT:

17 Joanna Whinery
18 Jennifer Driscoll
19 Gregory Mussman
20 Michael C. O'Malley
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I N D E X

EXAMINATION

RYAN MIDAY

BY MR. PATTAKOS:

5

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1 THE VIDEOGRAPHER: We're on the
2 record. The time is 11:28. Today is
3 Friday, June 14, 2019. We are at the
4 Cuyahoga County Prosecutor's Office located
5 in Cleveland, Ohio, to take the deposition
6 of Ryan Miday on behalf of the plaintiff,
7 in the case titled Laura Hoffman, et al
8 versus Michael O'Malley, et al. Case Number
9 1:18-CV-00309, in the United States
10 District Court, Northern District of Ohio,
11 Eastern Division.

12 My name is Peter Graves from JK
13 Reporting. The court reporter today is
14 Chana Margareten from JK Reporting.

15 Will counsel please -- present
16 please identify themselves for the record.

17 MR. PATTAKOS: Peter Pattakos for
18 the plaintiffs.

19 MS. HAZELET: Rachel Hazelet for
20 the plaintiffs.

21 MR. LAMBERT: Dave Lambert,
22 assistant county prosecutor, for the
23 defendants.

24 THE VIDEOGRAPHER: Will the court
25 reporter --

1 MS. POORE: Nora Poore -- sorry,
2 Nora Poore, assistant prosecuting attorney,
3 also for defendants.

4 THE VIDEOGRAPHER: Will the court
5 reporter please swear in the witness.

6 RYAN MIDAY, of lawful age, called by the
7 Plaintiffs for the purpose of examination, as
8 provided by the Rules of Civil Procedure, being
9 by me first duly sworn, as hereinafter certified,
10 deposed and said as follows:

11 EXAMINATION OF RYAN MIDAY

12 BY MR. PATTAKOS:

13 Q. Good morning, sir. My name is Peter Pattakos and
14 I represent the plaintiffs in this lawsuit.

15 Will you please state your name for the
16 record.

17 A. Ryan Miday.

18 Q. What's your birthday?

19 A. 9/26 [REDACTED].

20 Q. What's your address?

21 A. [REDACTED].

22 Q. What's your current position at the prosecutor's
23 office?

24 A. Director of communications policy.

25 Q. How long have you been in that position?

1 A. It was January 3, 2017.

2 Q. So you came in with the O'Malley Administration?

3 A. Yeah.

4 Q. Did you know Mr. O'Malley before January 2017?

5 A. Yeah.

6 Q. How did you know him?

7 A. I worked with him here in the prosecutor's
8 office.

9 Q. When?

10 A. Oh, boy. 2000 -- I don't know 2007ish, '08,
11 maybe.

12 Q. Until?

13 A. Until I left, which was, I don't know, maybe like
14 2011.

15 Q. And which administration was that?

16 A. Bill Mason.

17 Q. In the prosecutor's office?

18 A. Uh-huh.

19 Q. Same office?

20 A. Yeah.

21 Q. Different prosecutor, correct?

22 A. Same office.

23 Q. Okay. I should have asked, are you feeling well
24 enough to testify today?

25 A. Yeah, I am.

1 Q. Is there -- have you ingested any substances that
2 would impair your ability to recall events
3 accurately or testify truthfully?

4 A. No.

5 Q. Is there any other reason that you would not be
6 able to recall events accurately or testify
7 truthfully today?

8 A. No.

9 Q. Were you the director of communications under the
10 Mason Administration, as well?

11 A. I had a different title.

12 Q. What was your title?

13 A. Public information officer.

14 Q. Essentially, the same position?

15 A. Essentially, the same thing.

16 Q. What are your qualifications for this position?

17 A. I did similar work in New York City. And then,
18 of course, working with Prosecutor O -- Mason.
19 And I've handled -- press secretary for another
20 candidate in New York City.

21 Q. Who did you work for in New York?

22 A. Giovanni Puello, was a candidate. And then I
23 worked for a state assemblyman, Jeffrey Dinovitz.

24 MR. LAMBERT: Did you get those
25 names?

1 THE REPORTER: Yes.

2 Q. What was the first name?

3 A. Giovanni Puello.

4 Q. How do you spell that?

5 A. P-u-e-l-l-o, Puello, Giovanni.

6 Q. What was he a candidate for?

7 A. New York City Council.

8 Q. What year?

9 A. I don't know. I don't recall.

10 Q. Around what time?

11 A. Early 2000s, I think.

12 Q. And what year did you work for Mr. Dinovitz?

13 A. See, I left 2006. Probably 2000s till about
14 2006, I believe.

15 Q. Was that in New York City or Albany or --

16 A. New York City.

17 Q. We were in New York City at the same time.

18 A. Really?

19 Q. I was there from '96 to 2004.

20 A. Doing what?

21 Q. Went to undergrad at NYU, and then I worked for
22 the mayor's office. I worked for OMB --

23 A. Really?

24 Q. -- under Giuliani and Bloomberg.

25 A. Wow.

1 Q. Yeah.

2 A. That's interesting.

3 Q. I was an analyst. I was -- I would review the
4 capital projects to make sure they were eligible
5 for the bond financing.

6 A. Yeah.

7 Q. It was a good law school job.

8 A. Yeah, that's great.

9 Q. I was there for 911 and the blackout and
10 everything.

11 A. Yes, I was there, too. It was something else.
12 Yeah.

13 Q. We could chat about that on the break. It was a
14 good time to be in the City.

15 A. Yeah, it was, especially when Giuliani came in.

16 Q. It's changed a lot.

17 A. Yeah, it was considered ungovernable.

18 Q. Well, I will look forward to chatting about that
19 on the break.

20 So what are your responsibilities as director
21 of communications?

22 A. Just generally -- generally communicating
23 information about the office to the public, as
24 well as information from the public to -- you
25 know, internally to, you know, prosecutors and

1 staff.

2 Q. So you're sort of like the Sarah Huckabee Sanders
3 of this office; is that fair?

4 A. No, that's not fair.

5 Q. Why?

6 A. Well, let's choose some -- choose another name,
7 other than Sarah.

8 Q. But the position is essentially the same, right?

9 A. Yes.

10 Q. You're the public spokesman for this office?

11 A. Yes.

12 Q. Got you. Okay.

13 A. She left, didn't she?

14 Q. Is she gone now?

15 A. Yeah, I think she is going to run for governor,
16 so maybe I should say "yes".

17 Q. Oh, boy.

18 A. That would be my next -- my next venture, right?

19 Q. Okay. How did you end up with the job with
20 Mr. Mason in the first place?

21 A. I applied.

22 Q. Why did you apply?

23 A. Because I have done similar experience in New
24 York City.

25 Q. And why did you come to Ohio?

1 A. I'm from Ohio.

2 Q. Okay. Did you go to high school around here?

3 A. No.

4 Q. Where are you from?

5 A. Madison.

6 Q. And you -- were you applying for jobs all over
7 the place or you wanted specifically to move
8 home?

9 A. No, I wanted to move home. I have been there
10 ten years, it was time to move; subway, bus,
11 subway, bus, bus, subway.

12 Q. I understand.

13 A. After a while, it got -- it was great, but it was
14 time to move back.

15 Q. No place like Ohio.

16 Have you ever had your deposition taken
17 before?

18 A. No.

19 Q. Have you ever been in a deposition before?

20 A. I don't recall. I don't believe so.

21 Q. You understand how it works, generally, that I
22 ask questions, you answer them, unless Dave
23 specifically instructs you not to?

24 A. Yes.

25 Q. And you understand that Dave may object to

1 certain questions, but that those are generally
2 just to form, and that you are to answer the
3 question even when he objects, again, unless he
4 specifically instructs you not to?

5 THE WITNESS: Do you understand
6 it, Dave?

7 MR. LAMBERT: That's accurate.

8 A. Okay.

9 Q. Okay. And if you don't understand the question,
10 please ask me.

11 A. Okay.

12 Q. Okay. And I will try to rephrase it.

13 Okay. You understand you have been
14 specifically designated to testify today by the
15 office?

16 A. Yes.

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 1 was marked
19 for purposes of identification.)

20 - - - -

21 Q. I am going to hand you what's been marked as
22 Exhibit 1, and ask if you could identify this
23 document for the record.

24 A. What's your question?

25 Q. Do you recognize this document?

1 A. Yes, I believe this is what the Plain Dealer sent
2 me when they asked for a comment.

3 Q. Okay.

4 MR. POORE: Did you look at the
5 document?

6 THE WITNESS: What's that --

7 MR. POORE: Did you look at --

8 A. This is the lawsuit.

9 Q. No, sir. This is a notice of video deposition --

10 A. Okay.

11 Q. -- that we issued to the office.

12 A. Okay.

13 MR. LAMBERT: Read it. Don't skim
14 it, read it.

15 A. Okay. What's your question?

16 Q. Does it refresh your memory to have looked at
17 this document? Do you know what it is?

18 A. Of this document?

19 Q. Yes.

20 A. Yeah, I'm familiar with it. What specifically
21 are you asking about?

22 Q. Well, what do you understand about this document?

23 A. Well, there's five different points. What's your
24 question?

25 Q. Do you understand that you've been designated to

1 testify on the County's behalf pursuant to this
2 document?

3 A. Yeah, I answered your question before, that I was
4 designated to testify.

5 Q. And that is to subject number five, correct --
6 I'm sorry, number four, correct?

7 A. Yeah, the communications with members of the
8 media, yes.

9 Q. Yes. That you have been designated by the
10 County, by the prosecutor's office, to testify on
11 the office's behalf about communications with
12 members of the news media about the alleged
13 mishandling of sexual assault cases in the
14 juvenile justice unit in 2017, which led to the
15 allegedly defamatory news coverage, as identified
16 in the complaint in this lawsuit, and the reasons
17 why the County communicated with the media about
18 this subject.

19 Am I reading that correctly?

20 A. Yeah, you are reading it, but I disagree with,
21 which lead to defamatory news coverage.

22 Q. What is it that you disagree with?

23 A. I just disagree with the characterization of it.

24 Q. Well, we're saying, it's allegedly defamatory.

25 A. Okay. Well, I disagree with it.

1 Q. You disagree that it's defamatory?

2 A. I just disagree with how it's characterized.

3 Q. In what way?

4 A. You're asking me -- you asked me if I agreed with
5 that statement, and I answered you.

6 Q. Sir, I'm asking you if you understand that you
7 are here to testify about this subject identified
8 in top number one?

9 A. And I answered that before. The answer is "yes".

10 MR. LAMBERT: We'll stipulate that
11 he is, if that helps.

12 MR. PATTAKOS: I also want to know
13 what his understanding is of why he's here
14 and what he's testifying about, so --

15 THE WITNESS: I've answered that
16 three times.

17 Q. Okay. Do you believe you're qualified to testify
18 to this subject matter?

19 A. Yes.

20 Q. And what are your qualifications to testify to
21 this subject matter? Why are you qualified?

22 A. Didn't you already ask me that?

23 Q. No.

24 A. Yeah, you did. We went through my resume. I
25 mean, I'm not sure what else you want me to say.

1 Q. Well, you had personal involvement in these
2 communications, didn't you, sir?

3 A. Yes.

4 Q. Okay. Do you believe anyone at this office knows
5 more about the County's communications with the
6 news media about this issue and the reasons why
7 the County communicated with the media about this
8 issue than you do?

9 A. No. I think -- I think that's a fair statement.

10 Q. Did you make the decision to communicate with the
11 news media about this case?

12 A. I made a recommendation.

13 Q. To whom?

14 A. To Mr. O'Malley.

15 Q. It was ultimately his decision, though, correct?

16 A. Yes.

17 Q. Was it your idea to first go to the media with
18 this?

19 A. It was my recommendation that we do.

20 Q. I understand that it was your recommendation.
21 What I'm -- I'm asking a different question. I'm
22 asking, who first came up with the idea that you
23 might communicate with the media about this?

24 A. I don't recall, but I know I made a
25 recommendation to Prosecutor O'Malley.

1 Q. Were you the first one that suggested that the
2 office communicate with the media about this?

3 A. Well, the media was calling -- the media had been
4 calling the office.

5 Q. About what?

6 A. About sex -- sex cases.

7 Q. About the rape at Cleveland Heights, correct?

8 A. That was one case, yes.

9 Q. And that was what got the ball rolling on all
10 this, correct?

11 A. Yes, that was the main case.

12 Q. What else do you remember about this?

13 A. About what?

14 Q. About how the County came to be communicating
15 with the media about allegedly mishandled sexual
16 assault cases?

17 A. Again, I'll restate, we had started getting calls
18 from the media about a particular case out of
19 Cleveland Heights. And then that sort of led
20 into uncovering these cases that weren't handled
21 properly.

22 Q. Did you have any role in uncovering the cases?

23 A. No.

24 Q. Who is Kathleen Caffrey?

25 A. She worked for me at the time.

1 Q. At what time?

2 A. The beginning of -- I guess we're talking about
3 in January of 2017.

4 Q. Uh-huh. What was her position?

5 A. I think her title was public information officer.

6 Q. She reported to you?

7 A. Yeah.

8 Q. She no longer works for you?

9 A. She works in a different part of the office now.

10 Q. What part of the office?

11 A. In ICAC; ICAC, Internet Crimes Against Children
12 Task Force.

13 Q. When did she stop working for you?

14 A. I don't recall. Maybe -- I don't recall. Maybe
15 last year.

16 Q. What were her responsibilities when she worked
17 for you?

18 A. Similar responsibilities. I mean, we shared
19 responsibilities in the sense of communicating
20 with the media and communicating back to the --
21 internally, into the office.

22 Q. And that was her responsibilities between January
23 and March of 2017?

24 A. Yeah. Yes.

25 Q. Once the office had determined that a number of

1 sexual cases had been allegedly mishandled, how
2 did this come to be reported in the newspaper?

3 A. I contacted -- well, again, the media had started
4 to call about these cases, right?

5 Q. Uh-huh.

6 A. So they were calling, and then like I said, I
7 made a recommendation that we engage Rachel
8 Dissell.

9 Q. And why did you make that recommendation?

10 A. For a number of reasons. Again, media had
11 already been starting to call. And, you know,
12 eventually, this was going to get out into the
13 media. So it's -- I think it was important to
14 proactively contact the reporter who was familiar
15 with juvie court in particular.

16 Q. And Rachel was familiar with juvie court?

17 A. Yeah, very familiar.

18 Q. And why was she very familiar?

19 A. Oh, she's reported on juvie court for years, as
20 you know.

21 Q. She's a good reporter, right? She's very
22 knowledgeable?

23 A. Knowledgeable about what?

24 Q. About how the court works.

25 A. About what court? Juvie court?

1 Q. Yes.

2 A. Yeah.

3 Q. Okay. And she's very conscientious about her
4 job, correct?

5 A. What do you mean by that?

6 Q. I mean exactly what I said. Do you know what
7 "conscientious" means?

8 A. I mean, define it for me. I'm not going to
9 speculate on her state of mind with respect to
10 her job.

11 Q. Well, don't you, as the communications director
12 for a large and important public office, form
13 opinions about whether certain reporters are good
14 at their jobs or not?

15 A. That's why I contacted her.

16 Q. Okay. Conscientious is defined -- I will tell
17 you what, I will pull up the Merriam Webster
18 definition. It's meticulous and careful.

19 MR. LAMBERT: Okay. I'm going to
20 object on the ground that this is opinion.
21 Go ahead.

22 Q. You believed Rachel is a meticulous and careful
23 reporter?

24 A. She's a good reporter.

25 Q. Okay. Another definition that comes up is

1 wishing to do what is right, especially to do
2 one's work or duty well and thoroughly.

3 Do you believe that Rachel is one who wishes
4 to do what is right, especially to do her work or
5 duty well and thoroughly?

6 MR. LAMBERT: Objection. Calls
7 for opinion. Go ahead.

8 MR. PATTAKOS: Yeah, I am asking
9 for his opinion.

10 A. I can't answer that. I don't --

11 Q. Okay.

12 A. I think she's a good reporter.

13 Q. And you invited Rachel to come to the
14 prosecutor's office for an interview, correct?

15 A. Did I ask her to come to the office? She ended
16 up not reporting on the story.

17 Q. Right.

18 A. Okay.

19 Q. But she did come to the office, correct?

20 A. On this story?

21 Q. Yes.

22 A. I don't recall.

23 Q. Did you review any documents to prepare for
24 today?

25 A. I did.

1 Q. What documents did you review?

2 A. What do you mean? Be more specific.

3 Q. I don't know that I can, sir. I'm asking you
4 what documents did you review to prepare for
5 today?

6 A. E-mails, correspondence; generally that, e-mail,
7 correspondence.

8 Q. Which e-mails, which correspondence?

9 A. Correspondence with the media.

10 Q. That you had about this issue, correct?

11 A. Yeah.

12 Q. So you don't remember whether Rachel came to this
13 office about this matter? Is that your
14 testimony?

15 A. My testimony is I don't recall. I don't believe
16 that she -- she didn't report on this story. And
17 if she were here, I don't recall if she was here
18 specifically on this story.

19 Q. You invited Rachel to come to the office for an
20 interview, correct?

21 A. For the interview for what?

22 Q. About this story.

23 A. I don't recall exactly. I believe she was here
24 at this office, but I don't believe that she was
25 here on this case, but I don't recall.

1 Q. You don't recall having a meeting with Rachel,
2 Mr. O'Malley, Ms. Williamson, Mr. Mussman, and
3 Ms. Driscoll here at this office?

4 A. On what?

5 Q. On these -- on the allegedly mishandled --

6 A. With Rachel Dissell?

7 Q. -- sexual assault cases? Yes.

8 A. No, I don't recall that.

9 Q. Okay. You wanted Rachel to write about the case,
10 right?

11 A. So I contacted her.

12 Q. And she didn't write about the case, correct?

13 A. That's what I said earlier.

14 Q. And why didn't -- what is your understanding of
15 why Rachel didn't end up reporting on this story?

16 A. I learned at the time that there was a -- it was
17 different -- there were different beats within, I
18 think it was cleveland.com and the Plain Dealer.

19 And the court reporter was Cory Shaffer, and
20 I believe they felt it was a court -- a court --
21 you know, reporting on a court case -- cases, so
22 he ended up reporting on it.

23 Q. Rachel doesn't write for cleveland.com, does she?

24 A. I don't believe so, but it's -- you know, it's
25 blurry. I believe it was Plain Dealer. Is it

1 Advance Ohio? But at the time she -- she was not
2 writing for cleveland.com. Or, at least I should
3 say, Cory was writing for cleveland.com.

4 Q. Okay. Sorry. So you believe that Rachel wasn't
5 going to follow the story, because it was Cory
6 Shaffer's responsibility?

7 A. According to an -- what she e-mailed me
8 indicating that.

9 Q. Okay.

10 A. I think I also probably spoke with her on the
11 phone, but I don't recall a phone call, but I
12 know that in an e-mail it indicated that.

13 Q. Okay. Cory Shaffer writes in an e-mail that you
14 said to him that you didn't think that Rachel was
15 following the story anymore.

16 A. Okay.

17 Q. Did you say that to Mr. Shaffer?

18 A. What are you referring to?

19 - - - -

20 (Thereupon, Plaintiff's Exhibit 2 was marked
21 for purposes of identification.)

22 - - - -

23 Q. Well, here let's look at Exhibit 1 -- or
24 Exhibit 2. It's an e-mail from Cory Shaffer to
25 Chris Warnousky. Do you know who Chris is?

1 A. I think it was his editor.

2 Q. Yes.

3 A. Is that right?

4 Q. I think that's right. It says in the third
5 paragraph here, Ryan Miday says he didn't think
6 Rachel was following the story anymore.

7 MR. LAMBERT: Could you give him
8 one second? Take a minute and read that.

9 A. February 10th. Okay.

10 Q. Is that accurate, sir? Did you tell Cory that
11 you didn't think Rachel was following the story
12 anymore?

13 A. Yes.

14 Q. And what made you think that?

15 A. I stated earlier, I believe it was -- I received
16 an e-mail from Rachel indicating that she wasn't
17 covering the story. Or, I think I probably also
18 spoke with her on the phone.

19 Q. Okay. So you were wanting Cory to have an
20 exclusive on this, right?

21 A. What?

22 Q. You wanted Cory to have an exclusive on this to
23 get -- to have this meeting with the office
24 first, before anybody else reported on the story,
25 correct?

1 A. No, I don't -- an exclusive to Cory, we ended up
2 doing the story as well, with Cleveland -- or Fox
3 8.

4 Q. Well, I understand that, but if Cory writes here
5 that Ryan also told me that a TV station has
6 started asking about the situation this morning.
7 He said if we wanted to do anything on it, he
8 would hold off on responding to them until
9 Monday.

10 A. Okay.

11 Q. Did you say that to Cory?

12 A. Yes.

13 Q. And why?

14 A. Because there was another TV station inquiring.

15 Q. Why would you hold off?

16 A. Because another TV station was inquiring.

17 Q. I'm trying to understand why it matters.

18 A. Well, I don't understand what you don't
19 understand, as far as you got different media
20 outlets following a story.

21 Q. Uh-huh.

22 A. So --

23 Q. Uh-huh. Why would you hold off on talking to the
24 TV station? What's the reason?

25 A. I don't recall at the time. Maybe it was a

1 scheduling conflict with the TV station or it was
2 trying to arrange schedules for Cleveland -- or
3 Fox 8 and cleveland.com.

4 Q. But why would you tell Cory Shaffer that you
5 would hold off on responding to the TV station?

6 A. I don't understand your question. I just told
7 you why.

8 Q. What would scheduling have to do with it?

9 A. What do you mean, what would scheduling -- if
10 somebody's -- if you're calling me, if you're a
11 media outlet and you're calling me for an
12 interview, and I have got somebody else calling
13 as well, can we -- can we do it on Monday, Pete?
14 Scheduling -- scheduling may not work out on
15 Friday. Or I think this was on a Friday, so
16 there's various reasons.

17 Q. So you're telling me that this was not intended
18 to give Cory first access to the story?

19 A. Well, we ended up -- we did it with Fox 8, as
20 well. I don't under --

21 Q. So you're denying that that was the intent?

22 A. No, no, now you're putting -- what do you mean,
23 I'm denying? I didn't say anything about
24 denying. You're putting words in my mouth, Pete.

25 Q. I'm trying to understand your testimony.

1 A. No, you're putting words in my mouth. I state
2 here that -- it says, Ryan Miday says he didn't
3 think Rachel was following the story. He also
4 told me a TV station started asking about the
5 sit -- about the situation this morning. He said
6 if he wanted to, we would hold off in responding
7 until Monday.

8 Q. Is it true or is it not that your intent was to
9 give Cory first access to the story?

10 A. I know that was the intent when we contacted
11 Rachel.

12 Q. That was the intent when you contacted Rachel?

13 A. Yes.

14 Q. But --

15 A. But there are other -- there were other media at
16 the time contacting us about the Cleveland
17 Heights case.

18 Q. I understand your testimony about the
19 communications with Rachel. I want to understand
20 now the communications with Cory, okay?

21 A. Okay.

22 Q. Is it true or is it not that the intent when you
23 told Cory that you would hold off on responding
24 to the TV station was to give Cory first access
25 to the story?

1 A. Well, if it was, I wouldn't have rescheduled -- I
2 wouldn't have -- we wouldn't have done it on
3 Monday with Fox 8.

4 Q. So it was not?

5 A. I didn't say it wasn't.

6 Q. Was it or was it not?

7 A. We did an interview with Fox 8 and cleveland.com
8 on Monday.

9 Q. I understand that, sir. I just don't think it's
10 responsive to my question.

11 A. I think it is responsive. I just told you we did
12 an interview with two -- with two media outlets.

13 Q. I am going to try one more time.

14 A. Okay.

15 Q. When you told Cory that if Cory wanted to do
16 anything on this story that you would hold off on
17 responding to the TV station until Monday, did
18 you intend to give Cory first access to the story
19 or did you not?

20 A. On Monday, we did an interview with Fox 8 and
21 cleveland.com.

22 Q. So you just don't want to answer the question?

23 A. No, that -- no, that's --

24 MR. LAMBERT: Do you want to go
25 off the record and talk about this?

1 MR. PATTAKOS: No, I don't.

2 Q. Okay. Let's go on. What other reporters did the
3 office contact about this story?

4 A. When?

5 Q. At all.

6 A. Did we contact or did they contact us?

7 Q. Who did you reach out to? "You", meaning the
8 office.

9 A. Channel 5 had been calling, Channel 8 had been
10 calling, and then my correspondence with Rachel,
11 then Cory. And then I believe after the article,
12 there was other media outlets who then contacted
13 the office.

14 MR. LAMBERT: What article? You
15 say "the article".

16 THE WITNESS: On February the
17 13th, I believe.

18 Q. Cory's article?

19 A. Yeah.

20 Q. You knew that when Cory published the article,
21 when somebody published the article, that TV
22 stations would contact you, correct?

23 A. You never know.

24 Q. You never know, but you -- you had a pretty good
25 idea, didn't you?

1 A. But, no, you never know. You do this, you don't
2 know.

3 Q. Okay.

4 A. But this TV station was already involved.

5 Q. And you reached out to Peggy Gallek of Fox 8,
6 correct?

7 A. Reached out when?

8 Q. Some point in January or February of 2017.

9 A. No, I had indicated earlier that she had been
10 calling. Fox 8 had been calling this office.

11 Q. How about Mark Gillespie, of the Associated
12 Press?

13 A. Gillespie.

14 Q. Yeah.

15 A. AP, yeah.

16 Q. You called him, right?

17 A. I believe he called us.

18 Q. When did he call you?

19 A. After the story that -- after Cory's story ran, I
20 believe.

21 Q. Okay. And Megan Hickey of News 5?

22 A. What's your question?

23 Q. You contacted her, correct?

24 A. I believe -- I don't know if -- I don't recall.

25 I think Channel 5 had been -- had been contacting

1 this office, not Megan Hickey, but it was
2 Katherine -- I think it was Katherine Volk.

3 MR. LAMBERT: Kristin Volk.

4 A. Kristin Volk.

5 Q. So there was Peggy, there was Cory, there was
6 Rachel, there was Mr. Gillespie, and there was
7 Ms. Hickey, and I'm sorry the other? Volk?

8 A. Katherine, yeah.

9 Q. Katherine, what's her --

10 MR. LAMBERT: Kristin.

11 A. Kristin.

12 Q. Kristin Volk?

13 A. Channel 5.

14 Q. How do you spell that?

15 A. I don't know. V-o-l-k, maybe. I don't know.

16 Q. Okay. Is there any other reporter that the
17 office communicated with about this case?

18 A. Ideastream had contacted us.

19 Q. And you made contact with them, as well, right?

20 A. What do you mean, I made contact?

21 Q. You spoke with someone from Ideastream, correct?

22 A. Did I speak or did I e-mail?

23 Q. Communicated.

24 A. Communicated, yes, I believe we did, yes.

25 Q. Okay. And you communicated with all of these

1 reporters about the case, correct?

2 A. Yes.

3 Q. So when you contacted these reporters, what
4 investigation --

5 MR. LAMBERT: Objection.

6 A. No.

7 MR. LAMBERT: Misstates the
8 evidence.

9 Q. I'm sorry, when you communicated with these
10 reporters, please tell me what you had done to
11 investigate the story before you communicated
12 with the reporters about it.

13 A. I don't understand your question. You're asking
14 if I investigated?

15 Q. Yes. What had the office done to investigate the
16 story before communicating with reporters about
17 it?

18 A. You're talking about uncovering these cases that
19 weren't properly handled?

20 Q. If that's what it is.

21 A. Yeah, there was -- the office investi -- looked
22 at these cases, and found that, again, starting
23 with Fox -- or Fox 8 calling, Channel 5 calling
24 about the Cleveland Heights case, that then led
25 to finding other cases that weren't properly

1 handled, the office then did a thorough
2 investigation into them.

3 Q. What do you know about that investigation?

4 A. As I just -- I mean, I just characterized it.

5 Q. Could you --

6 A. Chain of events.

7 Q. Could you say anything else about the
8 investigation that was performed?

9 A. I was not pa-- I wasn't involved in the
10 investigation.

11 Q. Do you know how much time the office spent on
12 verifying what had happened with these cases
13 before contacting reporters?

14 A. How much time?

15 Q. Yes.

16 A. You're talking about minutes, hours, days?

17 Q. Either way.

18 A. I can't say definitively. I would say that a
19 considerable amount of time was spent.

20 Q. What's that?

21 A. A considerable amount of time.

22 Q. What is a considerable amount of time? How much
23 time do you believe was spent?

24 A. Hours, hours upon hours.

25 Q. Okay. Do you know if the office spoke with

1 Mr. Deskins before going to the press about this
2 case?

3 A. I don't know. I don't believe so.

4 Q. Do you know what, if anything, was done to verify
5 whether the 76 cases that were reported as
6 mishandled, were actually mishandled?

7 A. I just characterized how we -- the investigation.

8 Q. You don't have anything to add to that?

9 A. Add to what?

10 Q. You said -- your characterization?

11 A. That the office thoroughly investigated, no.

12 Q. So the prosecutor's office eventually met with
13 Cory Shaffer, correct?

14 A. Yes.

15 Q. Do you remember that meeting?

16 A. I was in that meeting.

17 Q. Were you in the meeting with Rachel, too?

18 A. What meeting are you referring to?

19 Q. Okay. So you don't remember meeting with Rachel?

20 A. What meeting are you referring to, Pete?

21 Q. There was a meeting with Rachel about the same --

22 A. What meeting?

23 Q. -- issue that you had a meeting with Cory with,
24 correct?

25 A. I don't recall that.

1 Q. Okay. What happened at the meeting with Cory?

2 A. Channel 8 and Cory were present. And it was kind
3 of, what do you call it, like a round robin,
4 where we pulled together a group of people who
5 talked to the media about cases not being
6 properly handled.

7 Q. Who was all at this meeting?

8 A. Joanna, Jennifer Driscoll, Prosecutor O'Malley.

9 MR. LAMBERT: What's Joanna's full
10 name?

11 THE WITNESS: Whinery.

12 A. Prosecutor O'Malley, Lisa Williamson, first
13 assistant, Russ Tye, Diane -- Diane Russell. And
14 I'm thinking I'm missing one person, I don't know
15 if Maggie was there. No.

16 Q. Was Mr. Mussman there?

17 A. Yes.

18 Q. What was said to Cory Shaffer at this meeting?

19 A. It was a discussion about these cases not being
20 properly handled.

21 Q. Do you remember anything more specifically than
22 that?

23 A. I mean, that was the general -- that's the
24 general conversation about this story, which was
25 these cases not being properly handled.

1 Q. Do you remember any specifics?

2 A. As far as the actual cases themselves?

3 Q. Yes.

4 A. I know that there was one case in particular
5 where somebody re-offended. Another one was
6 where it was a sexual assault in the home.

7 Q. Do you remember anything else about what was
8 discussed with Mr. Shaffer?

9 A. I think we talked about obviously how -- how this
10 -- you know, how this came to be, as far as
11 uncovering these cases.

12 Q. And what was said about that?

13 A. I'll restate that Channel 8 and Channel 5 had
14 been starting to call about the Cleveland Heights
15 case. And that led into, I believe it was a rape
16 crisis center notifying us, and us finding these
17 cases that weren't properly handled.

18 Q. Do you recall what was said about how it was
19 determined that these cases weren't properly
20 handled?

21 A. I don't recall the details. But the story was,
22 you know, these cases weren't properly handled.
23 We had victims out there. Cases weren't
24 prosecuted or cases were not referred to the
25 proper agency.

1 Q. Do you remember anything else about it?

2 A. Anything else, what do you mean by --

3 Q. Anything else about how these cases weren't --

4 A. No, because like I --

5 Q. -- properly handled?

6 A. I think, again --

7 Q. And was what -- I'm sorry, what was communicated
8 to Cory about how these cases were not properly
9 handled?

10 A. They weren't -- they weren't reviewed. They
11 weren't prosecuted. They weren't referred to
12 social agencies. Like I said, I think it was a
13 16-year-old, and I think it was a 6-year-old
14 victim in the same home; nothing was done.
15 Nothing was done on that case. So you had a
16 victim out there that no one -- you had a victim
17 out there, that's one case.

18 Q. Do you remember what was said about the
19 prosecutors who were determined to be
20 responsible for the alleged failures?

21 A. I don't know if we got into details about any --
22 any specific prosecutor. The story was -- and
23 again, I'll state, the story was, these cases
24 weren't properly handled.

25 Q. So you don't remember any details that were said

1 about any of the prosecutors who were disciplined
2 for this?

3 A. I don't recall. I don't recall if it was
4 discussed or what was discussed with respect to
5 the prosecutors. Again, this story was about
6 these cases not being properly handled.

7 Q. Did the office give Cory Shaffer any documents
8 about this story?

9 A. He -- he request -- he requested documents
10 pertaining to the disciplinary records of all
11 seven. And I don't recall, but I would have -- I
12 would have made copies for him to either read
13 there or take with him, but I don't believe he
14 took anything with him.

15 Q. All seven what?

16 A. All seven individuals.

17 Q. Which individuals?

18 A. Who were disciplined.

19 Q. Who were disciplined in connection with the
20 mishandled cases that were the subject of this
21 story?

22 A. Correct.

23 Q. Okay. Did the names of these individuals come up
24 in the meeting?

25 A. Like I said before, I don't believe so. I don't

1 recall.

2 Q. But you provided the disciplinary files to
3 Cory --

4 A. Yeah, per public records request, yes --

5 Q. -- before --

6 A. -- which is also pretty -- pretty common that a
7 reporter asks for such files.

8 Q. Okay. Do you know at the time this meeting with
9 Cory took place whether the prosecutor's office
10 knew how many cases Ms. Hoffman and Ms. Herman
11 had allegedly mishandled?

12 A. The -- that wasn't -- the focus of the meeting
13 with the media was about these cases.

14 Q. So --

15 A. That was my -- that was my -- that was my -- you
16 know, my understanding of -- my role here was to
17 communicate about these cases being -- not being
18 properly handled.

19 - - - -

20 (Thereupon, Plaintiff's Exhibit 3 was marked
21 for purposes of identification.)

22 - - - -

23 Q. I'm going to hand you what I have marked as
24 Exhibit 3.

25 Could you identify this document, please?

1 A. It's an article by Cory.

2 Q. This is the story that Cory eventually published,
3 correct?

4 A. The story that he published?

5 Q. On February 13th, 2017?

6 A. Yes.

7 Q. On the second page --

8 A. Now, there's -- you know, they updated this story
9 on February 14th, so which version are we looking
10 at?

11 Q. Well, if it notes that it's updated on
12 February 14th --

13 A. February 14th.

14 Q. Right. Okay. We're looking at the updated
15 version.

16 A. Yeah.

17 Q. Excuse me. If you go about two thirds down,
18 about six paragraphs from the bottom it says, the
19 prosecutors eventually uncovered 76 cases,
20 including 37 reported rapes and 32 reports of
21 gross-sexual imposition, that were never fully
22 reviewed for charges.

23 MR. LAMBERT: Which -- you are on
24 page --

25 MR. PATTAKOS: Page 2. Right

1 here, Dave.

2 MR. LAMBERT: Okay.

3 Q. Am I reading that correctly?

4 A. Yes, you're reading that correctly.

5 Q. Okay. You believe that that was accurate as of
6 the time of the report, correct?

7 A. Yep.

8 Q. Okay. On the third page, under discipline it
9 says, O'Malley last week asked three assistant
10 prosecutors who handled the bulk of the delayed
11 cases to resign. Am I reading that correctly?

12 A. Yeah, you're reading it correctly.

13 Q. Do you recall what was said about that in the
14 meeting with Cory?

15 A. No, I don't recall. Again, I don't recall the
16 details of -- of individuals being discussed at
17 this meeting. The focus of the meeting was these
18 cases, Pete --

19 Q. Do you know --

20 A. -- I don't know how else --

21 Q. Okay. Did you know that Laura and Linda only
22 ever handled seven of the allegedly mishandled
23 cases?

24 MR. LAMBERT: Objection. We're
25 talking about three prosecutors.

1 Q. Do you know that?

2 A. Restate the question.

3 Q. Do you know that Laura and Linda only ever
4 handled seven of these allegedly mishandled
5 cases?

6 A. That they only handled, you said, seven of these
7 cases?

8 Q. Did you ever know that?

9 A. Did I ever know that? At some point, yes.

10 Q. When did you know that?

11 A. I don't recall. Obviously, in preparation for
12 the meeting, but when specifically, I don't know.

13 Q. Would you agree that if Laura and Linda handled
14 seven of the allegedly mishandled cases, they
15 didn't handle the bulk of the delayed cases,
16 correct?

17 A. Say that again.

18 Q. It says here -- I'll ask you a different
19 question. You could see where it says, under
20 discipline --

21 A. Yeah.

22 Q. -- O'Malley asked three assistant prosecutors who
23 handled the bulk of the delayed cases to resign?

24 A. Yeah, that's three assistant prosecutors who
25 handled the bulk of the delayed cases.

1 Q. You understand that Laura and Linda, if they only
2 handled seven of these cases --

3 A. But they're talking about three here.

4 Q. I understand that.

5 A. That includes Robin.

6 Q. Okay. Do you think that's fair?

7 A. That -- what do you mean what's fair? Are you
8 asking me -- are you asking me if this is
9 accurate?

10 Q. No.

11 A. That's not what you're asking me?

12 Q. I'm asking you if you think it's fair to say that
13 Laura and Linda handled the bulk of the delayed
14 cases if they only handled seven?

15 A. Cory writes here that there are three assistant
16 prosecutors who handled the bulk of the delayed
17 cases. That's what he writes here.

18 Q. Uh-huh.

19 A. But you're not asking me that?

20 Q. No.

21 A. I'm saying that this is -- this is accurate what
22 Cory wrote.

23 Q. Okay. You had some follow-up communications with
24 Cory after the meeting, correct?

25 A. He contacted us.

1 Q. After the article was published, correct?

2 A. Correct.

3 Q. Do you remember what Cory followed you up --
4 followed up with you on?

5 A. There was a number of e-mails, I believe.

6 Q. What do you remember about that?

7 A. He asked a series of questions.

8 Q. Do you remember what he wanted to know?

9 A. The specific question, no.

10 Q. Do you remember anything about what Cory wanted
11 to know when he followed up with you?

12 A. Like I said, he asked a series of questions. If
13 you've got the document, I could -- I could refer
14 to it.

15 Q. You don't remember anything?

16 A. I said, if you got the document, I could refer to
17 it.

18 Q. I'm asking if you remember anything.

19 A. Remember anything about the series of questions
20 that he asked?

21 Q. Yeah. What Cory followed up with you on.

22 A. I know that there was, I think about the nature
23 of the investigation. But, again, if you have
24 the document, I could refer to that.

25 Q. I want to know what you remember first. So have

1 you exhausted your memory?

2 A. I didn't exhaust my memory. I'm asking if you
3 have the document that I could refer to.

4 Q. Okay. I don't want you to refer to a document, I
5 want to know what you remember, okay?

6 A. And I just indicated that he was following up on
7 the investigation of --

8 Q. Okay. And then you said you haven't exhausted
9 your memory, so let's go ahead and exhaust it.

10 A. Well, if you're referring to a document, how
11 about you give me the document?

12 Q. Sir, I'm not referring to a document, I'm
13 referring to your communications with Cory after
14 Cory's article was published, what do you
15 remember about --

16 A. And I said that --

17 Q. -- those communications?

18 A. I said that he followed up via e-mail with a
19 series of questions, yes.

20 Q. And what was he asking about?

21 A. And I said that if you've got the document, which
22 I'm sure you do, I could refer to it and answer
23 your questions.

24 Q. What was Cory asking you about?

25 A. I just said earlier, he's asking about the

1 investigation of these cases.

2 Q. What about the investigation?

3 A. He sent a series of e-mails subsequent to his
4 story that he wrote, okay? I'm sure you have the
5 e-mails. If you want to give me those, I could
6 answer those questions.

7 Q. So you don't remember anything --

8 A. I didn't say that. I said he communicated with
9 us via e-mail on a number of occasions with a
10 series of questions.

11 Q. You don't remember anything else about what Cory
12 asked you about, other than what you've already
13 testified?

14 A. Which was about following up on the investigation
15 of these cases.

16 Q. Yes.

17 A. And what's your question?

18 Q. Do you remember anything else?

19 A. Anything else, what do you mean? I said -- I
20 said what I remember. Do you have the document
21 or not? I could refer to it.

22 - - - -

23 (Thereupon, Plaintiff's Exhibit 4 was marked
24 for purposes of identification.)

25 - - - -

1 Q. Okay. I'm going to hand you what's been marked
2 as Exhibit 4. Do you remember this?

3 A. Yes.

4 Q. These are some of the items that Cory followed up
5 with you on, correct?

6 A. Yeah, this is February -- this is February 15th.

7 Q. This is an e-mail that you received from Cory,
8 correct?

9 A. Yeah, on February 15th, at 9:46 a.m.

10 Q. You and Ms. Caffrey, correct?

11 A. Yes.

12 Q. And Cory writes first, hey, guys, I have a few
13 follow-up questions for the juvenile division
14 story.

15 Number one, how many of the 76 sex offense
16 cases your office identified as needing review
17 were assigned to each APA who was forced to
18 resign; Laura Hoffman and Linda Herman?

19 Why is he asking you this now?

20 A. I think he was -- I think he was contacted at
21 some point by either one of them or both of them
22 or others about this story.

23 Q. Did the office not provide this information to
24 Cory before the article was published?

25 A. What information?

1 Q. In this question number one here.

2 A. Well, he wrote in his story, which I said was
3 accurate that three assistant prosecutors who
4 handled the bulk of the delayed cases, in fact,
5 there was seven that was discipline. But that is
6 an accurate statement. So he got that from this
7 office.

8 Q. But Cory is asking you here specifically how many
9 of the 76 cases Laura and Linda had handled,
10 correct?

11 A. That's what he's asking.

12 Q. Yeah. And he's asking that because the office
13 did not provide him with this information at the
14 meeting prior to him publishing the story,
15 correct?

16 MR. LAMBERT: Objection.

17 A. I can't answer that. I don't --

18 Q. You don't know?

19 A. We didn't engage Cory. These series of
20 questions, we didn't engage him. We made -- I
21 think we gave a short statement. But clearly
22 from this e-mail, Pete, he's going down the road
23 of talk -- wanting to talk about employees, and
24 we weren't going to do that.

25 Q. Explain that.

1 A. I mean, I -- what don't you understand about
2 that?

3 Q. What do you mean, you were not going to talk
4 about employees, you already provided him
5 disciplinary files for employees?

6 A. Per public records request.

7 Q. Okay. He also asks you what the higher date was
8 of those APAs.

9 Do you know why he is asking you for that?

10 A. Again, we weren't engaging Cory with all these
11 questions.

12 Q. You didn't engage him?

13 A. No, I said that we weren't going to. After this
14 story was published and he followed up with these
15 questions, and then I think he sent us subsequent
16 e-mails with I think more questions, we weren't
17 engaging it.

18 Because clearly, clearly if you're reading
19 this, he's going down the path of wanting to
20 specifically talk about employees that were
21 disciplined, and we weren't -- we issued a very
22 short statement, which we issued to other media
23 stations who followed up, as well. And that's
24 all.

25 Q. You didn't end up providing him with this

1 information that he wanted to know?

2 A. I said that when he came over per a public
3 records request, I think for the personnel file,
4 I either made a copy, that he reviewed there, or
5 he took it with him.

6 Q. But you didn't otherwise engage with him on this
7 information request?

8 A. Engage when?

9 Q. Ever.

10 A. What do you mean "ever"?

11 Q. I'm asking you --

12 A. You're asking me -- this is an e-mail after the
13 story published.

14 Q. Yes, sir.

15 A. This would be -- just to be clear about the
16 timeline.

17 Q. Yes, sir.

18 A. Okay.

19 Q. Yes.

20 A. And I stated and I'll state again, we didn't
21 engage him. We weren't going to go through all
22 these questions with him, because clearly where
23 he wants to go with this is he wants to talk
24 about individual employees, and we weren't -- we
25 weren't -- and we issued the short statement,

1 which I'm sure you have, I could point that out.

2 MR. PATTAKOS: Let's take a
3 five-minute break.

4 MR. LAMBERT: Okay.

5 MR. PATTAKOS: And we're almost
6 done. I'm optimistic we'll be done by
7 1:00.

8 THE VIDEOGRAPHER: We're going off
9 the record. The time is 12:23.

10 - - - -

11 (Thereupon, a recess was had.)

12 - - - -

13 THE VIDEOGRAPHER: We're back on
14 the record. The time is 12:35.

15 Q. Since it came up on the break, I didn't ask you
16 what your education credentials are. Could you
17 please just go over that briefly? Where did you
18 go to high school and college and any graduate
19 degree that you've received?

20 A. I went to high school, Massillon Perry High
21 School, John Carroll, and then Columbia for
22 graduate school, and -- yeah.

23 Q. What did you -- what are your degrees that you
24 got from John Carroll and Columbia?

25 A. Oh, god, what was it? Sociology, and then at

1 Columbia was psychology, psychology and higher
2 education.

3 Q. You got a master's there?

4 A. Yeah.

5 Q. How did you get into the press business?

6 A. I started actually writing for the Columbia
7 Spectator, which kind of got me into the media.
8 And then I'm trying to think how I connected with
9 Giovanni Puello. But we did -- we had done some
10 work at Columbia around -- with candidates for
11 office, bringing them on campus. So that's kind
12 of -- that was my foray into that. And then that
13 led to, like I said, working on campaign and then
14 eventually working with state -- state official.

15 Q. Okay. Thank you. Back to the -- back to the
16 case.

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 5 was marked
19 for purposes of identification.)

20 - - - -

21 Q. I am going to hand you what has been marked as
22 Exhibit 5.

23 Do you recognize these documents -- or this
24 document, I should say?

25 A. Yeah, from Cory to me.

1 Q. These are e-mails that you exchanged with Cory,
2 correct?

3 A. Cory to me and then me to Cory.

4 Q. Okay. And you sent and received these e-mails,
5 correct?

6 A. Correct.

7 Q. Okay. Cory says, hey, Ryan, on March 17th, 2017,
8 I got an e-mail from one of the juvenile
9 prosecutors who resigned that says both of the
10 APA combines had only 7 of the 76 un-reviewed sex
11 crimes cases and none of the inactive cases. Is
12 that accurate? If so, I need an on-the-record
13 response from you guys explaining why they were
14 made to resign.

15 Am I reading that correctly?

16 A. Yes, you're reading that correctly.

17 Q. You respond, hi, Cory, Mike said if her admission
18 is true, ignoring seven sexual assaults against
19 children in the county prosecutor's office will
20 never be acceptable, Ryan. Did I read that
21 correctly?

22 A. Yeah.

23 Q. Was that your response?

24 A. To Cory, yes.

25 Q. Was that the office's response?

1 A. Yes.

2 Q. Did the office ever make any other response to
3 this question by Cory?

4 A. To this -- to this specific question?

5 Q. Yes.

6 A. He asked -- he sent it -- like I said earlier, he
7 sent several, I think follow-ups with series of
8 questions. I think there was one other comment
9 we made to him, but we also made similar comments
10 to other media.

11 Q. But did you ever respond to this e-mail from Cory
12 in any other way?

13 A. This specific, I don't -- I don't -- I don't
14 believe so.

15 Q. Okay. And no one else at the office did either,
16 right?

17 A. You are asking me if I -- did I respond in any
18 other way than this?

19 Q. Did you or anyone at the office respond, is what
20 I'm asking now?

21 A. No, I don't believe so. But, again, as I stated
22 earlier, we issued a short statement to, I think
23 Ideastream, you know, AP, as I indicated they had
24 followed up. Fox 8 was there that day. I'm
25 trying to think of any -- and then there was

1 another comment that we made to -- I think we
2 provided Cory.

3 Q. In this e-mail when you say "Mike said", you're
4 referring to Mr. O'Malley, correct?

5 A. Correct.

6 Q. So you spoke with Mike about a response to this
7 e-mail?

8 A. Yeah.

9 Q. Mr. O'Malley?

10 A. Uh-huh.

11 Q. Okay. And this is what he told you to say,
12 correct?

13 A. I don't know, did he told me to say it or did I
14 recommend it to him?

15 Q. This is what he authorized?

16 A. But this -- Yes.

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 6 was marked
19 for purposes of identification.)

20 - - - -

21 Q. I'm going to hand you Exhibit 6. This is the
22 follow-up statement that you're referring to, the
23 response to this e-mail from Cory, correct?

24 A. No. State your question, again.

25 Q. Why don't you give it a look.

1 A. Okay. So I've got here, Cory contacts me, did
2 you guys -- did you guys get the number of the
3 sex crime cases that were assigned?

4 Q. And this is a few days later, right? This is on
5 March 21st, 2017?

6 A. March 21st?

7 Q. Yes.

8 A. So the story runs February 13th.

9 Q. Uh-huh. I mean, this is a few days after Cory
10 sent you the last e-mail on the 17th of March.

11 A. Yeah, he sent an e-mail on the 17th of March.
12 And then Exhibit 6, he sent on the 21st of March.

13 Q. Right.

14 A. Which is a considerable amount of time since he
15 published the story --

16 Q. Yes.

17 A. -- on February 13th.

18 Q. Yes. And you received this e-mail from Cory,
19 correct? It says, hey, man, did you guys get the
20 numbers of the sex crimes cases --

21 A. Yes.

22 Q. -- that were assigned to Herman and Hoffman yet?

23 A. Correct.

24 Q. And then the next page shows a response from
25 Ms. Caffrey, correct?

1 A. Yeah. Is it 3/21?

2 Q. Yes.

3 A. 3/21.

4 Q. Yes, 2:18 p.m.?

5 A. Yeah. Correct.

6 Q. And it says statement from Cuyahoga County

7 Prosecutor's office.

8 A. Uh-huh.

9 Q. It is Prosecutor O'Malley's belief that neglect
10 in even one sexual assault case is unacceptable.
11 Our office policy is not to discuss personnel
12 issues in the media. The work performed by these
13 employees was clearly deficient. When confronted
14 with that fact, they made a point to resign.

15 MR. LAMBERT: Choice.

16 MR. PATTAKOS: Choice, thank you.

17 Q. Is that correct? Did I read that correctly?

18 A. You read that correctly.

19 Q. Did you discuss this response with Mr. O'Malley?

20 A. Yes, I believe I did.

21 Q. And this was the response that he authorized,
22 correct?

23 A. Either -- that I either recommended or that he
24 authorized in the end, yes.

25 Q. Well, he would have had to authorize it in the

1 end, right?

2 A. In the end, yes.

3 Q. You didn't make any statements on the office's
4 behalf without being assured that Mr. O'Malley
5 had authorized them, correct?

6 A. That is my attempt when media contact is always
7 to seek authorization from Mr. O'Malley. Does
8 that always happen? We get a lot of media call.

9 Q. But that happened here, right?

10 A. Yes, I believe it did.

11 Q. Okay. So on March 21st, at 3:12 p.m., Cory
12 responds to Kathy, and says, thanks, Kathy, but I
13 thought Mike said during the first interviews
14 that he asked for their resignations. Am I
15 reading that correctly?

16 A. You're reading that correctly.

17 Q. And there was never any response to this,
18 correct?

19 A. I don't -- as I said earlier, he followed up with
20 a series of questions, including the ones you've
21 referenced here. And we weren't -- we weren't
22 going to engage, because clearly the path he was
23 going down was that these employees -- we didn't
24 want to trash -- we didn't want to trash them in
25 the media.

1 So I think that's all -- I think that's all
2 we -- I think we responded -- I think we issued
3 him another response, a very short response. But
4 was it in relation to this, I don't know. I'm
5 sure it's in one of the e-mails.

6 Q. Well, the truth is, he was giving you a re -- a
7 chance to not trash them, but to restore their
8 reputations, right?

9 A. He wrote -- he published an article, and we
10 weren't going to trash these folks by engaging
11 with him.

12 Q. But they had already been trashed, hadn't they,
13 sir?

14 A. I disagree with that.

15 Q. Well, he was asking to -- he was asking you for
16 clarification that they had only handled seven of
17 these cases, and that would have been a
18 restoration of their reputation; would it not
19 have been?

20 A. I disagree with that.

21 Q. Why?

22 A. We -- he published his story. And we weren't
23 going to engage with him on a series of questions
24 about employees. And as the statement says,
25 which is consistent, we -- our office policy is

1 not to discuss these personnel issues in the
2 media.

3 Q. Do you have anything else to say on that?

4 A. No. No.

5 - - - -

6 (Thereupon, Plaintiff's Exhibit 7 was marked
7 for purposes of identification.)

8 - - - -

9 Q. I am going to hand you what has been marked as
10 Exhibit 7.

11 A. It looks like it's three pages to an article and
12 then four pages of ads.

13 Q. Do you recognize it?

14 MR. LAMBERT: Read it.

15 A. Recognize what?

16 Q. The document.

17 A. It's four pages of ads.

18 Q. Okay.

19 A. I see a story from -- written by Mark Gillespie.

20 Q. And he's with the Associated Press?

21 A. Correct.

22 Q. Why don't you take your time and give the
23 document a read.

24 A. Okay. Okay.

25 Q. You're the one that communicated with

1 Mr. Gillespie, right?

2 A. Mr. Gillespie contacted -- I believe he contacted
3 the office.

4 Q. Did you speak with him? I believe you testified
5 before that you did.

6 A. Yeah.

7 Q. It's on the top of the second page of this
8 document it says, charges have been filed in
9 about a dozen of the 70 cases thus far.

10 Do you know why this 70 number is different
11 from the number of 76 that the office
12 communicated to Mr. Shaffer, that was reported on
13 cleveland.com?

14 A. I can't speak to why Mark reported 70.

15 Q. Okay.

16 - - - -

17 (Thereupon, Plaintiff's Exhibit 8 was marked
18 for purposes of identification.)

19 - - - -

20 Q. This is the last exhibit, Exhibit 8. Do you
21 recognize this article?

22 A. It looks like Tom Meyer, Channel 3.

23 Q. This is an article that was published by WKYC,
24 correct?

25 A. Yes.

1 Q. Could you look at the second page of this
2 article?

3 MR. LAMBERT: Read it.

4 Q. Take your time. Sure.

5 MR. LAMBERT: I'm going to raise
6 this issue, Peter. I don't think we've
7 ever seen this article before. Have you
8 ever produced it to us in discovery?

9 MR. PATTAKOS: I don't know if we
10 have. You have never seen this before?

11 MS. POORE: No.

12 MR. LAMBERT: I don't think I
13 have.

14 MS. POORE: This is not one of the
15 articles that you cited.

16 MR. PATTAKOS: Are you disputing
17 that his article was published?

18 MR. LAMBERT: I'm talking about
19 what you produced to us in discovery,
20 that's what I'm talking about.

21 MR. PATTAKOS: I can't say whether
22 this was produced or not. But I'm still
23 entitled to ask him questions about it.

24 MR. LAMBERT: Okay. Yeah, but I'm
25 going to object to -- to this. And I'll --

1 we'll talk about --

2 MR. PATTAKOS: I don't know that
3 we have an obligation to produce material
4 that are equally accessible to this office
5 as are to us.

6 MR. LAMBERT: I don't -- I don't
7 agree. But I'm just telling you, as far as
8 I know, this was never produced to us.

9 MR. PATTAKOS: Okay.

10 MR. LAMBERT: I will tell you, and
11 I could be wrong, but it doesn't look
12 familiar to me. But I'm just raising that
13 objection.

14 MS. POORE: Well, it's kind of
15 outside the scope of your -- your
16 paragraph 4, because, you know, this is
17 about the defamatory statements, and you
18 never identified this as being a defamatory
19 article.

20 MR. LAMBERT: So we'll -- we'll
21 note that objection, and we could continue.

22 MR. PATTAKOS: Okay. I just -- I
23 really am just asking about one specific
24 aspect of this document, which is on the
25 second page at the very end, it says --

1 MR. LAMBERT: Could I ask you to
2 give me a second to read it, I'm sorry?

3 MR. PATTAKOS: Yep.

4 MR. LAMBERT: Just real quick.

5 Okay. Thanks. I'm ready.

6 Q. It's says -- on the second page, it says, that
7 the prosecutor's office has filed charges in 22
8 of the 54 sex assault cases initially identified.

9 This article is dated February 23, 2017,
10 which is ten days after Cory's article was
11 published, correct?

12 A. Yes.

13 Q. Do you know why this number has gone down from 76
14 to 54?

15 A. Let me turn back to Cory's article. I don't know
16 why. I can't speak to why Tom Myer reported on
17 that number. It says, initially identified.
18 But, again, I can't speak to why Tom reported on
19 -- on that number.

20 MR. PATTAKOS: Okay. Thank you,
21 sir. I appreciate it.

22 THE WITNESS: Okay. Thank you.

23 MR. PATTAKOS: No further
24 questions.

25 THE VIDEOGRAPHER: We're going off

1 the record. The time is 12:54.

2 MR. LAMBERT: We're going to read.

3 Okay. Thanks.

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SIGNATURE OF DEPONENT

I, the undersigned, RYAN MIDAY, do
hereby certify that I have read the foregoing
deposition and find it to be a true and
accurate transcription of my testimony, with
the following corrections, if any:

PAGE	LINE	CHANGE	REASON
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Ryan Miday

C E R T I F I C A T E

The State of Ohio,) SS:
County of Cuyahoga.)

I, Chana Margareten, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named witness was by me, before the giving of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed by computer-aided technology under my direction; that this is a true record of the testimony given by the witness; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action; that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this ____ day of _____, A.D. 20 ____.

Chana Margareten, Notary Public, State of Ohio
55 Public Square, Suite 1332
Cleveland, Ohio 44113
My commission expires March 10, 2021

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LAURA HOFFMAN, et al., Plaintiffs, v. MICHAEL O'MALLEY, et al., Defendants.	Case No.: 1:18-CV-00309 Judge Christopher A. Boyko Plaintiffs' Notice of Video Depositions of (1) Defendant Michael O'Malley, and (2) Representatives of Defendant Cuyahoga County pursuant to Fed.R.Civ.P. 30(B)(6)
---------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Please take notice that, pursuant to Rule 30(B)(6) of the Federal Rules of Civil Procedure, Plaintiffs Laura Hoffman and Linda Herman will take the deposition upon oral examination, **on May 23 and 24, 2019**, of Defendant Cuyahoga County by and through one or more officers, directors, managing agents, or other persons who are designated to testify on its behalf with respect to following topics:

1. The reasons for the County's respective decisions to advise Plaintiff Laura Hoffman, Plaintiff Linda Herman, and Robin Belcher, in February 2017, that each of these persons could resign from her employment with the Cuyahoga County Prosecutor's Office ("CCPO") or face termination of that employment, and the facts supporting those reasons. *See Responses and Objections to Plaintiffs' Amended Second Set of Interrogatories to Defendant Cuyahoga County, Nos. 1, 2, and 5.*
2. The reasons for the County's respective decisions to discipline Chad Cleveland, Kristen Hatcher, Lakesha Johnson, and Ralph Kolasinski for allegedly mishandling sexual-assault cases in the juvenile justice unit in 2017, as identified in the County's Responses and Objections to Plaintiffs' Third Set of Interrogatories, No. 8, and the facts supporting those reasons.
3. The reasons for the County's respective decisions to allow Chad Cleveland, Kristen Hatcher, Lakesha Johnson, and Ralph Kolasinski to remain employed by the CCPO, as stated in the County's Responses and Objections to Plaintiffs' Third Set of Interrogatories, No. 8.
4. The County's communications with members of the news media about the alleged mishandling of sexual-assault cases in the juvenile justice unit in 2017, which led to the allegedly defamatory news coverage as identified in the Complaint in this lawsuit, and the reasons why the County communicated with the media about this subject.



5. The County's negotiations with Laura Hoffman over reasonable accommodations for her disability.

Additionally, on **June 12, 2019**, Plaintiffs will, pursuant to Fed.R.Civ.P. 30, take the deposition upon oral examination of Defendant Michael O'Malley.

The depositions shall begin on the above-noticed dates at 9:00 AM at The Pattakos Law Firm LLC, 101 Ghent Road, Fairlawn, OH 44333, continue from day-to-day until completed, be recorded by video and stenographic means, and occur before a qualified Notary Public. This notice is being issued prior to a scheduling conference with opposing counsel for good cause, being that the witnesses to testify for the County need to be identified in accordance with the above in order for the schedule for these depositions to be finalized.

Respectfully submitted,

/s/ Peter Pattakos
Peter Pattakos (0082884)
Rachel Hazelet (0097855)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road
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Certificate of Service

My office emailed the foregoing document to counsel for Defendants, Dave Lambert (dlambert@prosecutor.cuyahogacounty.us), Nora Poore (npore@prosecutor.cuyahogacounty.us) and Brendan Healy (bhealy@prosecutor.cuyahogacounty.us) on March 21, 2019, and filed it on the same date using the Court's e-filing system, which will serve the document on all necessary parties.

/s/ Peter Pattakos
Attorney for Plaintiffs

From: Cory Shaffer <CShaffer@cleveland.com>
Date: Friday, February 10, 2017 at 12:44 PM
To: Kris Wernowsky <kwernowsky@cleveland.com>
Subject: Juvenile rape cases

Hey man.

I know when we talked about the O'Malley thing about the juvenile rape cases, you said Quinn didn't really want to touch it because he thinks it's retribution against Deskins. I was also under the impression that Rachel was still going to do it.

I just wanted to let you know that O'Malley fired three juvenile lawyers this week over this, and the office has identified as many as 1,900 sexual assault cases that never got reviewed by juvenile prosecutors.

Ryan Miday says he didn't think Rachel was following the story anymore. He also told me that a TV station has started asking about the situation this morning. He said if we wanted to do anything on it he would hold off on responding to them until Monday.

Do you want to me chase this, or still stick with Quinn's assertion not to do anything with it?



Prosecutors uncover dozens of uncharged juvenile cases, including rape



By **Cory Shaffer**, cleveland.com

[Email the author](#) | [Follow on Twitter](#)

on February 13, 2017 at 9:05 PM, updated February 14, 2017 at 1:11 PM

CLEVELAND, Ohio -- Cuyahoga County Prosecutor Michael O'Malley said his office has uncovered dozens of sexual assault cases in the office's Juvenile Division that sat dormant on the desks of assistant prosecutors for months and, in some cases, years.

Three prosecutors were forced to resign last week after a team of lawyers found more than 70 rape and sexual assault cases dating back to 2014. The prosecutors failed to track the cases, and no charges were filed, O'Malley said.

Some cases included victims as young as 3 years old, suspects who had already confessed their crimes and suspects who later went on to commit more crimes, O'Malley and assistant prosecutors Joanna Whinery, Jennifer Driscoll and Gregory Mussman said Monday in an interview.

Ads by ZINC



Those prosecutors also uncovered more than 1,900 additional cases that assistant prosecutors in the juvenile division may have incorrectly categorized as "inactive" in the office's computer system since 2012. O'Malley, who took office just over a month ago, is now examining new ways to track the cases that get handled in the juvenile division.

"It's horrific," O'Malley said.

The prosecutors said their review of the cases could lead to hundreds of new charges being filed in the coming months.

O'Malley said he does not believe his predecessor, former Cuyahoga County Prosecutor Timothy McGinty, knew about the cases.

"This has nothing to do with the previous administration, other than the fact that you have a Juvenile Chief who apparently failed in his duties as well as somebody who was in charge of that intake unit who failed in their duties," O'Malley said.

McGinty's chief of the juvenile division was Assistant Cuyahoga County Prosecutor Duane Deskins.

Last month, Cleveland Mayor Frank Jackson appointed Deskins to a newly created position in his cabinet, Chief of Prevention, Intervention and Opportunity for Youth and Young Adults.

Deskins told cleveland.com Monday night that he couldn't respond to the way the cases were handled without the details of each case, but said he was not aware of any delays or mishandling of cases while he headed the juvenile division.

He pointed out that there were two levels of supervisors underneath him who would have directly dealt with cases on a daily basis, but stood by the work the office did.

"We did an aggressive job," he said.

The revelation

The Cleveland Rape Crisis Center reached out to prosecutors during O'Malley's first week in office for updates on several sexual assault cases involving juveniles.

A victim advocate at the rape crisis center also asked Whinery for an update on approximately 15 cases. Victims had become concerned that their cases had "fallen through the cracks," Whinery said.

When Whinery, Driscoll and Mussman started looking into the cases, they found the assistant prosecutors never fully reviewed them for charges, the lawyers said.

They launched a deeper probe and uncovered more uncharged cases in the juvenile division.

Then on Jan. 26, police in University Heights asked about the October sexual assault of a high school student at Cleveland Heights High School.

An assistant juvenile prosecutor took the case shortly after the crime was reported, but no charges were filed, Mussman said. Once Mussman looked at the case file, his office found probable cause to file charges against four teenagers and took out arrest warrants later that day.

On prosecutors' desks, they found years-old police reports that had never been entered into office database that tracks cases. Other cases, Mussman said, were entered into the database but sat for 18 months with no follow-up.

The prosecutors eventually uncovered 76 cases, including 37 reported rapes and 32 reports of gross-sexual imposition, that were never fully reviewed for charges.

"Police reports and files had been submitted to the office, but there was no charging being done," O'Malley said.

The revelation shocked O'Malley's team. O'Malley was a former assistant prosecutor under Cuyahoga County Prosecutor Bill Mason, whose 10-year tenure included the accumulation of thousands of rape kits that had sat untested in Cleveland's police department. Cleveland police officials first discovered the backlog in late 2009.

The revelation led to widespread reforms. McGinty created a special task force to use DNA evidence to test the kits and clear the backlog. It led to hundreds of convictions and is considered a national model.

More cases

But O'Malley cautioned that the 76 sexual assault cases may be just a fraction of the cases that were delayed or brushed off.

The office uses computer software that will send periodic alerts to remind assistant prosecutors if their cases are still active. The software allows prosecutors to change each case from "active" to "inactive," meaning the alerts would stop popping up, O'Malley said.

From 2007 to 2012, there were 13 cases that were switched from active to inactive status, and they were all duplicates of cases that had already been created, O'Malley's office said.

But Driscoll and Mussman found that since 2012, assistant prosecutors in the juvenile division switched more than 1,900 cases to "inactive" in the software.

Driscoll started looking into the cases that had been moved to "inactive" status, and found that, while many were duplicate files, others involved rape, aggravated robbery and felonious assault reports that should have been fully investigated. Some of the reasons prosecutors gave for moving the cases to inactive included that the victim or the victim's parents didn't answer a phone call, Driscoll said.

"It pretty much amounted to a do-nothing list," O'Malley said.

The office is conducting a full audit to determine how many of the 1,900 cases were incorrectly labeled as inactive. Driscoll is working backwards and has identified 20 cases that were incorrectly switched to "inactive" status dating back to May.

O'Malley said he assumes that review will lead to hundreds of new charges being filed in the coming months.

Discipline

O'Malley last week asked three assistant prosecutors who handled the bulk of the delayed cases to resign.

Laura Hoffman, Linda Herman and Robin Belcher resigned Wednesday, Thursday and Friday, respectively, after each had a disciplinary hearing in O'Malley's office.

O'Malley disciplined four more lawyers, handing out a combination of suspensions, demotions and reassignments, according to disciplinary records.

Records cite incompetency, inefficiency and neglect of duty as reasons for the reprimands.

O'Malley said his office is still investigating the scope of the problem and he could discipline more employees in the future. But he pledged that no case will ever fall through the cracks under his tenure in office.

"We will never have a situation where we're talking about any case and any victim where this office failed them," O'Malley said.

Changes

O'Malley has installed Mussman as the head of the juvenile division, and assigned veteran prosecutor Maggie Kane to the juvenile division to help with the influx of cases.

The office is also going to work with the juvenile court to install a better tracking system for every case that gets brought to their office, whether it's initiated by a police report or a case kicked to them through municipal court.

The office has eliminated the "inactive list," Driscoll said. Cases will remain active until supervisors in the juvenile division decide to either file charges or completely close the case.

"If it takes time, it takes time," she said. "We want to do the right thing."

'Not about personalities'

O'Malley was in the running to get the job that Deskins ultimately got when McGinty took office in 2012. McGinty instead assigned

O'Malley to supervise the unit that prosecutes crimes in the southwest side of Cleveland and the surrounding suburbs.

O'Malley said his office's decision to go public with revelations had nothing to do with making McGinty or Deskins look bad.

"This isn't about personalities. This is about results," O'Malley said. "And the results for the public have been a failure in this particular case."

To comment on this story please visit [***Monday's crime and courts comments page.***](#)

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MR

Miday, Ryan <rmiday@prosecutor.cuyahogacounty.us>

Hi Cory, Got your email. I will respond. Ryan

Wed 2/15/2017, 11:47 AM

CS

Cory Shaffer

Wed 2/15/2017 9:46 AM

To: rmiday@prosecutor.cuyahogacounty.us; kcaffrey@prosecutor.cuyahogacounty.us &

Reply | v

Sent Items

Hey guys.

I have a few follow-up questions for the juvenile division story:

1. How many of the 76 sex-offense cases your office identified as needing review were assigned to each APA who was forced to resign, Laura Hoffman and Linda Herman?
2. What was the hire date of each of those APAs?
3. What was Robin Belcher's role in the office, and when was she first hired?
4. How many of the 76 cases were assigned to the APAs who received discipline? What are their hire dates?
5. What was Mr. Kolasinski's role? Did he know about the cases not getting entered for review, or the inactive list?
6. Can you provide the correspondence from the Rape Crisis Center advocate?
7. How did Prosecutor O'Malley decide who to force to resign and who to seek discipline against?
8. Can you provide a list of case numbers for these cases that sat dormant?

Thanks guys.

-Cory

Cory Shaffer
Crime Reporter
cleveland.com
Cell: 216-316-7045
Twitter: [@cory_shaffer](https://twitter.com/cory_shaffer)





Cory Shaffer

Fri 3/17/2017 9:41 AM

To: rmiday@prosecutor.cuyahogacounty.us

Reply | v

Sent Items

Hey Ryan.

I got an email from one of the juvenile prosecutors who resigned that says that both of the APAs combined only had 7 of the 76 un-reviewed sex-crimes cases, and none of the inactive cases.

Is that accurate? If so, I need an on-the-record response from you guys explaining why they were made to resign.


Cory Shaffer
Crime Reporter
cleveland.com
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Twitter: [@cory_shaffer](https://twitter.com/cory_shaffer)





Miday, Ryan <rmiday@prosecutor.cuyahogacounty.us>

Fri 3/17/2017 5:21 PM

To: Cory Shaffer 

  Reply | 

Inbox

Hi Cory

Mike said:

If her admission is true, ignoring seven sexual assaults against children in the county prosecutor's office will never be acceptable.

Ryan

...



Cory Shaffer

Tue 3/21/2017 11:10 AM

To: Miday, Ryan <rmiday@prosecutor.cuyahogacounty.us> ↗

  Reply | v

Sent Items

Hey man.

Did you guys get the numbers of the sex-crimes cases that were assigned to Herman and Hoffman yet?

Cory Shaffer
Crime Reporter
cleveland.com
Cell: 216-316-7045
Twitter: [@cory_shaffer](https://twitter.com/cory_shaffer)





Caffrey, Kathleen <kcaffrey@prosecutor.cuyahogacounty.us>

Tue 3/21/2017, 2:18 PM



Statement from the Cuyahoga County Prosecutor's Office:

It is Prosecutor O'Malley's belief that neglecting even one sexual assault case is unacceptable.

Our office policy is not to discuss personnel issues in the media. The work performed by these employees was clearly deficient. when confronted with that fact, they made a choice to resign.

...



Cory Shaffer

Tue 3/21/2017 3:12 PM

To: Caffrey, Kathleen <kcaffrey@prosecutor.cuyahogacounty.us> 



 Reply

Sent Items

Thanks Kathy.

But I thought Mike said during the first interviews that he asked for their resignations?

Cory Shaffer

Crime Reporter

cleveland.com

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Cuyahoga County prosecutor: Dozens of child sex assault cases were ‘ignored’



In this file photo, Michael O'Malley speaks at a community forum at the Harvard Community Services Center in Cleveland. Cuyahoga County prosecutor O'Malley said Tuesday that more sexual assault cases are expected to be found as his office continues to review more than 1,900 cases categorized as inactive since 2012. O'Malley said Tuesday it's likely that hundreds of criminal charges from the cases prosecutors failed to enter into the Juvenile Court's tracking database and determine whether charges were warranted. Tony Dejak — The Associated Press file

By Mark Gillispie, The Associated Press

Posted: 02/14/17, 3:32 PM EST | Updated: on 02/14/2017

[18 Comments](#)

CLEVELAND >> Assistant prosecutors in Cleveland “ignored” about 70 rape and sexual assault cases involving juvenile suspects and victims and failed to determine if criminal charges should be filed, the new Cuyahoga County prosecutor said Tuesday.

Prosecutor Michael O'Malley said additional sexual assault complaints involving juveniles are expected to be found in the coming weeks as his office continues reviewing more than 1,900 cases marked inactive in a computer system used by prosecutors.

“There was a conscious decision (by prosecutors) to make some of these cases inactive,” O'Malley said. “It’s outrageous.”

The problem was first reported Monday by Cleveland.com.

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Charges have been filed in about a dozen of the 70 cases thus far, O'Malley said, adding that some may not result in charges while others will be sent back to police for further investigation. The review of the inactive cases could result in hundreds of new charges being filed, he said.

The prosecutor's office was first alerted to the problem during O'Malley's first week in office by an advocate from the Cleveland Rape Crisis Center acting on behalf of victims' families who asked for an update about some of the cases that had been ignored.

The review has consumed the prosecutor's office during O'Malley's first six weeks in office. "We're peeling the layers of an onion," he said. "And every day there are more revelations."

Some of the victims in the 70 cases were as young as 3 years old. And some of the cases, which date back three years, would have been easy to prosecute because suspects confessed, O'Malley said.

Three assistant county prosecutors have been forced to resign and four others have been disciplined. O'Malley said he plans to refer prosecutors' names to the Ohio Supreme Court's disciplinary counsel.

It's not clear why prosecutors failed to act on the cases or to enter them into the office's case-management system. O'Malley said he finds it "hard to believe" that his predecessor, Tim McGinty, would have allowed prosecutors to ignore cases. O'Malley defeated McGinty in last year's Democratic primary and was elected by a wide margin in November.

McGinty didn't return telephone messages seeking comment on Tuesday.

O'Malley said some of the prosecutors were new to the job, but he noted that a supervisor who resigned had been on the job for more than a decade.

The Juvenile Court's prosecutor's unit was previously run by Duane Deskins, who was hired last month by the city of Cleveland to lead an anti-violence program involving youths and young adults. Attempts to reach Deskins on Tuesday through a city spokesman were unsuccessful.

Deskins told Cleveland.com he couldn't respond to what O'Malley and his staff have uncovered without details from each case, but said he didn't know cases had been ignored and that there were two levels of supervisors who worked underneath him.

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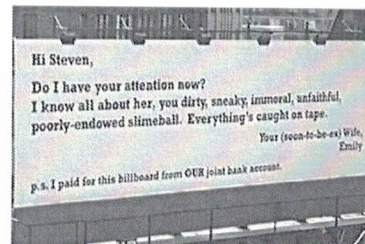
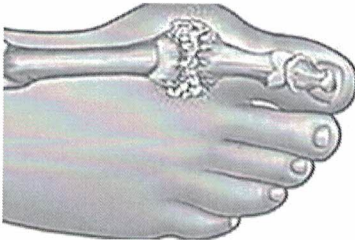
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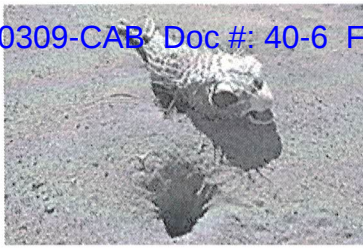
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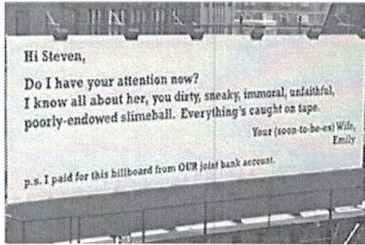
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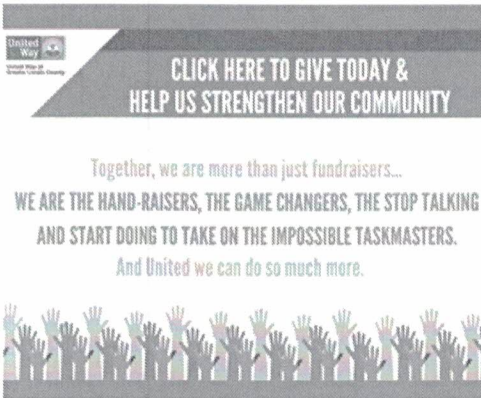


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Statistics-driven system ignored child rape cases

Tom Meyer, WKYC 6:29 PM. EST February 23, 2017



(Photo: WKYC-TV)

CUYAHOGA COUNTY - Prosecutors in the office of Cuyahoga County Prosecutor Mike O'Malley are learning of new and disturbing details in what they are calling an outrageous handling of juvenile criminal cases.

"It's absolutely atrocious what's happened here," said Jennifer Driscoll, the assistant prosecutor in charge of investigating a couple thousand unprocessed cases involving juvenile crimes.

Driscoll said the juvenile justice unit under Duane Deskins placed a higher value on statistics than they did on justice for young victims of crime, including rape and other sexual assaults.

"It was a very stat-driven system and so stats and reports were very important. And to have active cases lingering would look bad for the stats," Driscoll said.

Driscoll says that might explain why about 2,000 cases were classified 'inactive.'

These are cases that sat dormant collecting dust, and date back to 2013.

O'Malley says some of the cases would have been easy to pursue because suspects confessed. Instead, Driscoll says Deskins' staff did nothing and allowed sex offenders to walk the streets.

"Nothing else happened. Some suspects repeated offenses," Driscoll said.

Deskins left the office in December to take a reported \$120,000 job at Cleveland City Hall.

Mayor Frank Jackson appointed Deskins to lead an anti-violence program involving youths and young adults.

WKYC Channel 3 News tried to talk to Deskins twice, but each time was told that he was unavailable.

Deskins never returned phone calls. The Investigator Tom Meyer approached Deskins at the end of his work day at City Hall to ask questions on behalf of young victims of crime whose cases were ignored.

"We're not having this conversation," said an irritated Deskins.

The former county prosecutor wanted Meyer to check in with the city's spokesman on an issue that involved the county.

Deskins refused to answer any questions, including those involving 'inactive' cases which Driscoll says no longer exist in O'Malley's office.

"Once a case was marked inactive, it wasn't on anyone's radar," Driscoll explained. "I think Deskins was charged with running a unit that allowed this to happen under him."

Mayor Jackson has acted as though nothing happened. He refused to talk on-camera and said through a spokesman that he had no response to the news involving Deskins.

The spokesman said Jackson has no second thoughts about hiring Deskins.

The prosecutor's office has filed charges in 22 of the 54 sex assault cases initially identified.

Driscoll's team is still examining nearly 2000 cases and more charges are likely..

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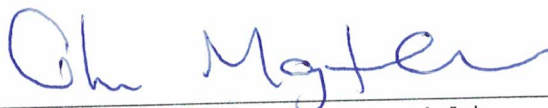
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